SUPREME COURT, U.S.
JOHN T. FEY, Clerk

In the

Supreme Court of the United States

October Term, 1957

No. 708

FRANK JIMMY SNIDER, JR.
Petitioner

v.

W. FRANK SMYTH, JR.
Superintendent of the Virginia State Penitentiary
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Frank Jimmy Snider, Jr., of Gadsden, Alabama, respectfully prays that a writ of certiorari be issued out of and under the seal of the Court to review the final decision and judgment of the Supreme Court of Appeals of Virginia, rendered on the 9th day of October, 1957, hereinafter set forth and represents as follows:

OPINIONS OF THE COURTS BELOW

On June 27, 1956, in the Hustings Court of the City of Roanoke, Virginia, Frank Jimmy Snider, Jr., was convicted of statutory rape and sentenced to be executed. On November 23, 1956, the Supreme Court of Appeals of Virginia denied an appeal for writ of error.

In February, 1957, Snider petitioned this Honorable Court for a writ of certiorari. The writ was denied on March 25, 1957. Petition to rehear was filed and subsequently denied on May 6, 1957. See *Snider v. Commonwealth of Virginia*____U. S.____, 1 L ed. 2d. 663, 77 S. Ct.____.

We respectfully request the Court to treat and consider as a part of this petition, the former petition filed for certiorari and the brief of the Commonwealth of Virginia filed in opposition to the petition for the writ.

The questions raised in the former petition for the writ of certiorari were not raised in the trial and in Appellate Courts of Virginia. Consequently, in our humble opinion, the writ for certiorari was denied as this Court was not required to decide questions not presented to the Courts below.

Since the denial of the petition for the writ of certiorari, questions vital to Snider's constitutional rights and privileges have been raised in the courts of Virginia.

On July 3, 1957, Snider filed a petition for habeas corpus in the Hustings Court, Part II, of the City of Richmond, Virginia. The petition was denied for the reasons stated in the Court's order and opinion of July 5, 1957. See Appendix I. On July 8, 1957,

Snider filed a supplemental petition for the writ of habeas corpus in said Hustings Court. This petition was denied for the reasons stated in the Court's order and opinion of July 8, 1957. See Appendix II.

On July 9, 1957, the United States District Court for the Eastern District of Virginia, granted a writ of habeas corpus and the execution of Snider was stayed. The Order and Memorandum are presented as Appendix III and Appendix IV, respectively, to this petition. The District Court was of the opinion that Snider's petition was meritorious and presented substantial grounds for consideration by the Courts of Virginia, and the Federal Courts. The District Court required that Snider proceed with an appeal from the judgment of the Hustings Court, Part II, of the City of Richmond, rendered on July 8, 1957, inasmuch as the District Court felt that Snider should exhaust all of his rights and remedies under the Laws of the Commonwealth.

The petition for writ of error and supersedeas before the Supreme Court of Appeals of Virginia on the refusal of the Hustings Court, Part II, of the City of Richmond, to grant petitioner a writ of habeas corpus was denied on the 9th day of October, 1957. See Appendix V. It is from this decision petitioner seeks the issuance of a writ of certiorari.

Snider is in the Virginia State Penitentiary at Richmond, Virginia, under sentence of death. An indefinite stay of execution has been granted petitioner as a result of the action of the United States District Court for the Eastern District of Virginia.

Petitioner here and now states that this petition is addressed to this Honorable Court in lieu of his continuance of this action before the United States

District Court for the Eastern District of Virginia because of the delicate question of interference by inferior Federal Courts with the judgment of Courts of sovereign States. Petitioner further believes that his matter may be expedited by direct application to the Supreme Court of the United States. We also deem it expedient to preserve petitioner's rights by this application for certiorari.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257 (3) (June 25, 1948, c. 646, 62 Stat. 929).

QUESTIONS PRESENTED

Frank Jimmy Snider, Jr., assails the judgment of conviction and he here and now contends that he was denied due process of law and equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States, and Section 8 of the Constitution of Virginia, specifically as follows:

(1) He was denied the right of counsel, in that a reasonable time was not afforded between the time of the assignment of counsel by the Trial Court and the date of trial, for the accustomed incidents of consultation and opportunity of preparation for trial;

(2) There was reason to believe that he was insane or feeble-minded and was put to trial without a determination of his mental condition, as required by the Statutes of Virginia in such cases made and provided.

THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED AND STATEMENT OF THE CASE

The Constitutional provision and statutes involved are found on Pages 6, 7 and 8 of the petition for writ of certiorari filed in February, 1957, which writ was made a part of the record by the filing of same with the petition for writ of habeas corpus before the Hustings Court, Part II, for the City of Richmond. Further, additional statutes in support of petitioner's position may be found on pages 8, 9 and 10 of the petition for writ of error and supersedeas presented before the Supreme Court of Appeals of Virginia, in July, 1957.

The statement of the case, prior to the filing of the petition for habeas corpus, is fully set out on pages 8, 9, and 10 of the initial petition for a writ of certiorari filed with this Court.

For the sake of brevity and in an attempt not to be redundant, petitioner has respectfully referred this Court to the pages hereinabove set out.

ARGUMENT

I.

(a) Snider was Denied the Right of Counsel of his Own Choosing;

(b) Time was Not Allowed for Proper Consultation and Opportunity of Preparation for Trial.

(a) The brief of the Commonwealth of Virginia filed in opposition to the petition for writ of certiorari to the Supreme Court of Appeals of Virginia, on page 5, contained the following:

"In addition to Mr. Houchins, the petitioner was also represented by Mr. Ludger D. Martin of Gadsden, Alabama, a member of the Alabama Bar. Mr. Martin was counsel of the petitioner's own choosing, from the petitioner's home city in Alabama * * ."

Snider here and now represents that the foregoing statement made by the Commonwealth in its brief is not true. Roy D. McCord, Esq., an Attorney of Gadsden, Alabama, was employed as counsel of his own choosing. See affidavit of petitioner's father, Frank Jimmy Snider, Sr., filed herewith as Appendix VI.

Roy D. McCord has been the Snider family attorney for many years. He had been employed to represent Snider. Ludger D. Martin, Esq., was a young lawyer in McCord's office in Gadsden, Alabama. He was not employed as counsel. In desperation, Martin came to Roanoke only after another trial date had been refused McCord and saw and consulted with Snider for only a few moments before the trial actually began. The affidavit of Snider's father corroborated by the telegram of McCord (Appendix VII) and the affidavit of Martin (Appendix VIII), are most pertinent to the issues of this case and clearly show that Snider was denied his Constitutional rights and privileges. We earnestly ask the Court to painstakingly read the affidavit of Snider's father, the affidavit of Martin and the telegram of McCord. McCord is a man of high repute, capable and experienced in trial work. Had McCord not been told by the law enforcement officer of Virginia that the case would not be tried until some time during the July Term of Court, Snider would have been repre-

sented by counsel of his own choice and his counsel would have had sufficient time to properly prepare petitioner's defense. These rights and privileges were manifestly denied Snider, for he was represented by not only counsel not of his choice, but by Martin, a young and inexperienced attorney, who had arrived at the place of trial only hours before its commencement.

(b) Assistance of counsel means more than mere presence of counsel at the trial of the issue. It means *effective* assistance.

> "It is a general rule that a reasonable time for the preparation of a defendant's case must be allowed between the time of assignment of counsel by the court and the date of trial." *Powell v. Alabama*, 287 U. S. 45, 77 L ed. 158, 53 S. Ct. 55, 84 A.L.R. 527."

This Court has made clear its stand as to the necessity of effective assistance of counsel in a State prosecution for a capital crime. See *Reece v. Georgia*, 350 U. S. 85, 100 L ed. 77, 76 S. Ct. 167.

What we know as lawyers we are not required to forget as Judges. All too well is known by the members of the Bar, as to the time and efforts necessary in the proper and effective preparation of a trial—the initial interview with your client to observe client's personality, mannerisms and narrative; the determination of the strong and weak points of the case; the interview of the witnesses; the investigation of the facts; the preparation of the law; the preparation for expert testimony. The aggregate of these time-consuming aspects must be considered.

Snider, as he stands before this Court in the shadow of the mechanism which fulfills the judgment of extreme penalty states, in no frivolous or false manner, that the most important phase of the preparation of his trial, that is, a full and adequate opportunity of counsel to consult with him and for counsel to absorb the facts and circumstances surrounding the crime for which petitioner stood indicted, was denied.

II

There Was Reason to Believe that Snider was Insane and was Put To Trial Without Determination of His Mental Condition.

Petitioner hereby reiterates the references to the procedings had in the Trial Court pertaining to the appointment of the Commission to examine him and determine his mental condition and the citations to statutes in support of his position set out in the former petitions filed. The offense of which Snider was convicted indicated sexual abnormality. The Legislature of Virginia has sought to protect persons so accused and convicted by exploring their mental condition. See Virginia Code Section 53-278.2 to 53-278.4 inclusive, cited on pages 8 and 9 of the petition filed before the Supreme Court of Appeals of Virginia in July, 1957, for a writ of error and supersedeas.

Only three days elapsed from the impaneling of the jury to try the case and the actual trial of the matter. Within this time a Commission was appointed whose purpose was to ascertain Snider's mental condition and to accordingly, report to the Court its determination. Petitioner submits that the time allowed for the Commission to examine him was grossly

inadequate. This point appears too clear for argument. Further, to this very instant, the Commission's determination is unknown.

As Judge Walter E. Hoffman of the United States District Court for the Eastern District of Virginia noted in his Memorandum in support of the granting of the writ of habeas corpus (Appendix IV, *supra*):

> "The record does not indicate that the physicians appointed by the order of June 22, 1956, ever made any report, verbal or written, to anyone. Nor does the record reveal that the physicians examined petitioner, although it may be fairly presumed that they complied with the order. To whom and what the physicians ascertained is unknown from the record."

With this point the Commonwealth, in its brief in opposition to the writ of certiorari filed, takes no issue.

Thus said this Court in *Chessman v. Teets*, ____ U. S.____, 1 L ed. 2d. 1253, 77 S. Ct. ____:

> "On many occasions this Court has found it necessary to say that the requirements of the Due Process Clause of the Fourteenth Amendment must be respected, no matter how heinous the crime in question and no matter how guilty an accused may ultimately be found to be after guilt has been established in accordance with the procedure demanded by the Constitution. Evidently it also needs to be repeated that the overruling responsibility of this Court is to the Constitution of the United States, no matter how late it may be that a violation of the Constitution is found to exist. This Court may not disregard the Constitution because an appeal in this case, as in others,

has been made on the eve of execution. We must be deaf to all suggestions that a valid appeal to the Constitution, even by a guilty man, comes too late, because courts, including this Court, were not earlier able to enforce what the Constitution demands. The proponent before the Court is not the petitioner but the Constitution of the United States."

Petitioner here and now contends that he is incarcerated in flagrant violation of his Constitutional right of due process of law and equal protection of the laws.

CONCLUSION

Accordingly, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court or that this Court direct for trial and determination the issues raised in the petition for habeas corpus now pending in the United States District Court for the Eastern District of Virginia, which District Court has decided that petitioner is entitled to a hearing on this matter and further, held the issuance of the writ of habeas corpus in abeyance until Snider had exhausted his rights in the State Courts and for direction by this Court.

Respectfully submitted:

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Roanoke, Virginia
Attorneys for Petitioner

Dated: January 6, 1958.

PROOF OF SERVICE

I, T. W. Messick, an attorney of record for Frank Jimmy Snider, Jr., petitioner herein, depose and say that on the 4th day of January, 1958, I served a copy of the foregoing petition, by mailing the same, with first class postage prepaid, to the following counsel of record:

Kenneth C. Patty,
Supreme Court Building,
Richmond, Virginia,
Attorney General of Virginia

C. E. Cuddy,
Municipal Building,
Roanoke, Virginia,
Attorney for the Commonwealth

Arthur B. Crush, Jr.,
Municipal Building,
Roanoke, Virginia,
Assistant-Attorney for the Commonwealth

T. W. Messick

Subscribed and sworn to before me at Roanoke, Virginia, this 4th day of January, 1958.

Notary Public
Mary B. Hitt
Comm. Mary B. Taylor

My commission expires:
June 13, 1960

APPENDIX I

ORDER OF JULY 5, 1957 OF HUSTINGS COURT PART II, CITY OF RICHMOND, VIRGINIA

The petitioner, Frank Jimmy Snider, Jr., by counsel, heretofore on July 3, 1957, having presented to the Court his Petition for a writ of habeas corpus with respect to the commitment resulting from his trial in the Hustings Court of the City of Roanoke on June 25-27, 1956; the Court doth order the same filed.

And upon a consideration of the Petition the Court being of opinion (1) that in the absence of any allegation of fact tending to show wherein the appointment of counsel to defend the petitioner three days prior to his trial prejudiced his defense in fact, and that such appointment and trial three days later would not constitute a denial of due process of law as a matter of law; and (2) that if the petitioner was insane either at the time of the alleged commission of the offense for which he was tried or was insane at the time of his trial, or if there were any doubt thereof, the failure to plead any such alleged insanity as a defense is a bar to any subsequent attempt to raise the issue by habeas corpus, the issue of sanity or insanity and the failure of the record to show the filing of a commission report thereon not being jurisdictional nor a denial of equal protection of the laws;

Therefore, the Court being of opinion that there has been no sufficient allegation of any violation of federal or state constitutional guarantees, the Court doth deny the petition for a writ of habeas corpus; to which action of the Court the petitioner by counsel objects and excepts.

A Copy, Teste: (s) Chas. D. Purdy, Clerk.

APPENDIX II

ORDER OF JULY 8, 1957 OF HUSTINGS COURT PART II, CITY OF RICHMOND, VIRGINIA

This day came the petitioner, Frank Jimmy Snider, Jr., by counsel, and by leave of Court filed his Supplemental Petition for a Writ of Habeas Corpus herein.

And upon a consideration thereof and the affidavit of Frank J. Snider, Sr., father of the petitioner, it appearing that many of the matters in the affidavit are based upon hearsay; that matters relating to the waiver of extradition of the petitioner from Alabama to Virginia are not pertinent to the question of whether there was a denial of due process of law in the petitioner's trial; that it does not appear that any request was made to the Court for a continuance of the trial;

And the Court being of opinion that the Petition and the Supplemental Petition fail to show probable cause for the issuance of a writ of habeas corpus, the Court doth deny the Petition and Supplemental Petition therefor.

To which action of the Court the petitioner, by counsel, objects and excepts.

A Copy, Teste: (s) Chas. D. Purdy, Clerk.

APPENDIX III
ORDER OF
THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA

Upon consideration of the verified application for petition for writ of habeas corpus and the supplemental application for same as filed by Frank Jimmy Snider, Jr., together with an examination of the exhibits and affidavits filed herewith, and for reasons stated in a Memorandum this day filed, it is ORDERED

That a writ of habeas corpus shall issue out of this Court directing the respondent, W. Frank Smyth, Jr., Superintendent of the Virginia State Penitentiary, to produce the body of said Frank Jimmy Snider, Jr., in proper person before this Court at Norfolk, Virginia, on the 12th day of August, 1957, at 10:00 a.m.

It is futher ORDERED that in the event the appropriate appeal documents are filed with a Justice of the Supreme Court of Appeals of Virginia, and further time is required for consideration of the merits of said petition for writ of habeas corpus as heretofore filed in the Hustings Court of the City of Richmond—Part 2, this Court will defer action on said writ of habeas corpus pending a final determination by the Supreme Court of Appeals of Virginia, or by the United States Supreme Court in the event the petitioner deems it proper to perfect any appeal or apply for certiorari if adverse action be taken by the Supreme Court of Appeals of Virginia.

(s) Walter E. Hoffman
United States District Judge

Newport News, Virginia
July 9, 1957

APPENDIX IV

MEMORANDUM OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Petitioner has applied for a writ of habeas corpus to be issued out of this Court against the respondent who is alleged to have the custody of the body of said petitioner. Petitioner is scheduled to die in the electric chair on July 11, 1957.

The facts of this sordid case justify the imposition of such punishment if petitioner's constitutional rights have been protected. On May 13, 1956, petitioner criminally assaulted a nine-year-old female child in Roanoke County, Virginia. He was arrested at his home in Gadsden, Alabama, during the latter part of May and, after waiving extradition, was returned to Virginia. A Special Grand Jury was convened on June 4, 1956, and returned an indictment charging statutory rape. On June 22, 1956, the following order was entered by the state court:

> "It appearing to the court that the defendant, Frank Jimmy Snider, Jr., is unable to employ counsel for his defense, Ransom B. Houchins is appointed to defend the said Frank Jimmy Snider, Jr.
> "Upon the motion of the attorney for the Commonwealth of Virginia, it is ordered that Dr. Chas. M. Irvin and Dr. E. J. Palmer be, and they are hereby, appointed a commission to examine the mental condition of the defendant, Frank Jimmy Snider, Jr."

Three days later, on June 25, 1956, petitioner was brought to trial on his plea of not guilty. The case was concluded on the following day, June 26, 1956, with the jury bringing in a verdict of guilty and imposing the death penalty. The motion to set aside the verdict was heard by the Court on June 27, 1956, and, upon being overruled, the death sentence was imposed.

It appears from the briefs filed in the appellate courts that, while the order designating court-appointed counsel was not entered until three days prior to the trial, the attorney had conferred with the petitioner prior to that time. It further appears that an attorney from Gadsden, Alabama, participated in the trial. The record does not indicate that any request for a continuance was made.

The order appointing the physicians to examine petitioner's mental condition was *presumably* in accordance with Sec. 19-202 of the Code of Virginia, 1950, as amended, which provides:

> "If, prior to the time for trial of any person charged with crime, either the court or attorney for the Commonwealth has reason to believe that such person is in such mental condition that his confinement in a hospital for the insane or a colony for the feeble-minded is necessary for proper care and observation, the court or the judge thereof may, *after hearing evidence on the subject*, commit such person, if a white person, to any State hospital for the insane best adapted to meet the needs of the case and, if a colored person, to the Central State Hospital, under such limitations as it may order, pending the determination of his mental condition. In any such case the court, in its discretion, may appoint one or more physicians skilled in the diagnosis of in-

sanity, or other qualified physicians, and when any person is alleged to be feeble-minded may likewise appoint persons skilled in the diagnosis of feeble-mindedness, not to exceed three, to examine the defendant before such commitment is ordered, make such investigation of the case as they may deem necessary and *report to the court* the condition of the defendant at the time of their examination. A copy of the complaint or indictment, attested by the clerk, together with the report of the examining commission, including, as far as possible, a personal history, according to the form prescribed by the general board of directors of the State hospitals, shall be delivered with such person to the superintendent of the hospital to which he shall have been committed under the provisions of this section. As used in this section the term 'court' shall be construed to include courts not of record and courts of record."

The record does not indicate that the physicians appointed by the order of June 22, 1956, ever made any report, verbal or written, to anyone. Nor does the record reveal that the physicians examined petitioner, although it may be fairly presumed that they complied with the order. To whom and what the physicians ascertained is unknown from the record. Their testimony was not taken prior to or during the trial, nor, as far as known, at any time thereafter. They have not been produced for cross-examination by defense counsel but they were apparently available. The motion for the appointment of the two physicians was made at the request of the prosecutor three days before trial. No such motion was made by defense counsel.

Under Sec. 19-203 of the Code of Virginia, 1950, it is provided that if a court, in which a person is held for trial, has reasonable ground to doubt the sanity or mentality of such person, the court shall suspend the trial and proceed in accordance with Sec. 19-202, hereinabove quoted, or, in lieu thereof, the court may impanel a jury to inquire into the fact as to the sanity or mentality of the accused. Sec. 19-205 provides for the appropriate procedure before a jury or commission as to the sanity of the accused. The expenses of the examining physician are provided for under Sec. 19-207 and other provisions are made for the determination of sanity after conviction, but before sentence, as well as after sentence, same being contained under Secs. 19-208 and 19-209.

The proper interpretations of these sections of the Code of Virginia dealing with the handling of suspected mental cases involving criminals is one of considerable importance to the Commonwealth of Virginia. Following the petitioner's conviction in the Hustings Court of the City of Roanoke, a petition for certiorari was filed with the Supreme Court of Appeals of Virginia where the same was denied on November 23, 1956. In the interim period, the Governor of Virginia granted a stay of execution. Thereafter, petitioner applied for a writ of certiorari in the United States Supreme Court and said petition was denied on March 25, 1957, the Governor of Virginia having meanwhile granted a further stay for the purpose of perfecting said appeal.

On July 3, 1957, petitioner filed an application for a writ of habeas corpus in the Hustings Court of the City of Richmond—Part 2, said petition being denied on July 5, 1957. On July 8, a supplemental

petition was filed in the same court and denied on the same date.

The petition for a writ of habeas corpus in this court was first presented at Newport News, Virginia, on the afternoon of July 8, 1957. The Court advised counsel for petitioner that it did not appear from said petition that the petitioner had exhausted his State remedies through an appeal from the denial of the writ of habeas corpus by the Hustings Court of the City of Richmond—Part 2. While information had been given to this Court that the Governor of Virginia had declined to grant a further stay pending an appeal from the Hustings Court of the City of Richmond—Part 2, the Court was not satisfied that this was sufficient under the circumstances and advised counsel that no action would be taken by this Court unless and until it affirmatively appeared that the Governor of Virginia had declined to take any further action in the premises. An affidavit having been now submitted as a part of the petition for writ of habeas corpus in this Court to the effect that a further stay of execution was requested of the Governor in order to perfect an appeal from the final decision of the Hustings Court of the City of Richmond—Part 2, it would appear that petitioner has exhausted all State remedies now available to him. If no stay of execution is granted, the matter will become moot on July 11, 1957, when petitioner is executed.

It is well settled that a federal court should not entertain an application for writ of habeas corpus requested by a state prisoner until and unless the State remedies have been exhausted, and these remedies include appropriate action by the highest court of the State as well as a further appeal or application

for certiorari to the Supreme Court of the United States. There are, however, exceptional circumstances which justify the right of a district court to entertain an application of this type. In *Darr v. Burford, 339 U. S. 200,* at page 218, it is stated that where extraordinary instances occur which require disregard of the accustomed procedure, the district court may act in a case of peculiar urgency.

A further delay to permit the Supreme Court of Virginia and the United States Supreme Court to interpret the provisions of the statutes referred to herein will impose no hardship upon any one, other than the petitioner himself, who is asking for relief. While the briefs on the direct appeal from the merits of the case do raise some of the questions now presented by the petition for writ of habeas corpus filed in the Hustings Court of the City of Richmond—Part 2, as well as in this court, the Supreme Court of Appeals of Virginia was not necessarily required to take cognizance of these points as they were not raised in the trial court. By the same token, the United States Supreme Court was not required to take action on questions not raised at the time of trial. The petitioner is entitled to a hearing on these questions, and as it appears that all other available remedies have been exhausted and that circumstances of peculiar urgency exist, the Court will issue a writ of habeas corpus returnable to this Court directing the production of the body of Frank Jimmy Snider, Jr., in proper person on the 12th day of August, 1957, at 10:00 a.m., in Norfolk, Virginia, or at such time thereafter as counsel for the respective parties may agree.

This Court recognizes that it has no right to peremp the jurisdiction of the State court in this pro-

ceeding and suggests that if the petitioner files the appropriate petition before the Supreme Court of Appeals of Virginia on or before the 30th day of July, 1957, and should a Justice of that Court suggest that further time is required to consider of the merits of said petition, this Court will delay action on the petition for writ of habeas corpus pending a final determination by the Supreme Court of Appeals of Virginia.

(s) Walter E. Hoffman
United States District Judge

Richmond, Virginia
July 9, 1957

APPENDIX V

OPINION OF SUPREME COURT OF APPEALS OF VIRGINIA RENDERED OCTOBER 9, 1957

The petition of Frank Jimmy Snider, Jr., for a writ of error and supersedeas to a judgment rendered by the Hustings Court of the City of Richmond, Part II, on the 8th day of July, 1957, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and W. Frank Smyth, Jr., Superintendent of the Virginia State Penitentiary, was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the Court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said Hustings Court.

A copy, Teste:
(s) H. G. Turner
Clerk

APPENDIX VI

AFFIDAVIT OF FRANK J. SNIDER, SR.

Dated July 6, 1957

STATE OF VIRGINIA, AT LARGE, to wit:

This day personally appeared before me, C. Overton Lee, notary public for the State of Virginia at large, whose commission expires February 1, 1958, the within deponent, FRANK J. SNIDER, SR., at Room 1148, John Marshall Hotel, Richmond, Virginia, at 6:15 p.m., July 6, 1957, and after being first duly sworn by me, made oath to the following:

My name is Frank J. Snider, Sr., and I am now in the City of Richmond, Virginia; I reside in Gadsden, Alabama, which is approximately 550 miles from Roanoke, Virginia.

I am the father of Frank J. Snider, Jr. I am a laboring man, molder by trade; I am employed by Peerless Pipe Foundry of Alabama. I am a poor man. I live with my wife in Gadsden. We have raised two sons. My oldest son is named James Wilburn Snider who resides in Detroit, Michigan, and he is a structural steel worker.

My son, Frank Jimmy Snider, Jr., is twenty-nine years old. He is married and has two small children: a son aged seven years and a daughter aged two and a half years. Since Frank's arrest in May of 1956, I have helped provide for the support and maintenance of his family.

Mr. Roy D. McCord, attorney of Gadsden, Alabama, has been our family attorney for approximately thirty years. Mr. McCord's father was an attorney

and also represented my family for a number of years. Mr. Roy D. McCord is fifty-nine years old; he has practiced law in Alabama for thirty-six years and is a highly reputable, capable, and experienced trial lawyer.

Mr. McCord has known Frank Jimmy Snider, Jr., ever since Frank was a little boy. In May, 1956, Frank was arrested in Alabama at the request of the Roanoke, Virginia, authorities on a warrant for statutory rape. As soon as Frank was arrested, he called and sought to employ McCord as his attorney. Frank was injured in October, 1955, during the construction of the General Electric plant in Roanoke County, Virginia. Frank was a structural steel worker. He fell and was injured while engaged in the erection of structural steel. He was hospitalized for sometime in the Lewis-Gale Hospital, Roanoke, Virginia, for head and back injuries.

As the result of the injuries thus sustained, Frank was unable to work until the latter part of February or March, 1956. Consequently, Frank Jimmy Snider, Jr., was without funds to employ and pay for the services of an attorney.

I employed McCord to represent Frank. In view of the nature of the charges in Virginia, Mr. McCord advised that Frank not waive extradition and that we have a mental examination made of Frank in Birmingham, Alabama. I would have followed McCord's advice except for the following facts:

Captain K. E. Allman, head of the detective department of Roanoke, Virginia, came to Gadsden, Alabama, and talked to McCord and me. Frank was in jail in Birmingham. Captain Allman wanted Frank to waive extradition. I wanted to have a mental ex-

amination made of Frank in Birmingham. Captain Allman advised me that it would be a waste of money to have a mental examination of Frank in Alabama inasmuch as Frank had been in the navy. There was a naval base at Norfolk, Virginia, and the Virginia authorities would send Frank to the naval base for a thorough mental examination. Captain Allman said that the examination would be made by fine doctors and without cost to me.

Frank said he was innocent and would waive extradition. I relied on Captain Allman's promise that the Virginia authorities would have Frank examined by the naval doctors at the naval base in Norfolk and we waived extradition.

I employed McCord to represent Frank in Roanoke, Virginia, if it became necessary to try the case. Captain Allman told McCord and me that Frank would have a mental examination at the naval base in Norfolk, Virginia, and if Frank was all right the case in Roanoke would probably be tried in July, 1956.

I came to Roanoke to see Frank on June 9, 1956. I learned, for the first time, that he had already been indicted and the case was set for trial on June 25, 1956. I returned to Gadsden, Alabama, on June 11, 1956, and I went immediately to see McCord. I advised McCord that Frank had already been indicted and the case set for June 25, 1956. McCord replied that it could not be true, that he understood that the case would not be tried until sometime during the July term of court. McCord immediately called by long-distance telephone the prosecuting authorities in Roanoke, Virginia, and he was informed that Frank had been indicted and the case was set for trial on June 25, 1956, and that the case would have to be

tried on that date. McCord requested that the case be continued to a convenient date in July so he could prepare for trial and be present to represent Frank. The request was emphatically denied.

McCord had court engagements, cases set for trial in the courts of Alabama, throughout the month of June, 1956. He sought continuances of the cases in the Alabama courts and tried to rearrange his trial docket so that he could prepare for Frank's trial. McCord finally advised me that due to his engagements in the courts of Alabama he would be unable to prepare for Frank's trial, that the Roanoke, Virginia, authorities would not agree to continue the trial to the July term as he understood Frank would be tried if he was found to be all right by the doctors at the naval base. McCord told me that he would be unable to represent Frank because he could not leave his court engagements in Alabama in order to prepare for the trial on June 25, 1956.

McCord had an assistant in his office, a young lawyer, Mr. Ludgar D. Martin. In desperation and at the suggestion of McCord, I employed Martin to help Frank with his trial. Martin had practiced law only a few years and had little trial experience. He left Alabama by airline on June 24, 1956, arrived in Roanoke, Virginia, that night, and without preparation gave such aid as he could to Mr. Houchins, attorney appointed by the court in its order of June 22, 1956, to defend Frank in the trial that began on June 25, 1956.

On page 5 of the Brief of the Commonwealth filed with the Supreme Court of the United States in opposition to the petition for writ of certiorari,

the Commonwealth represented to the United States Supreme Court as follows:

> "In addition to Mr. Houchins, the petitioner was also represented by Mr. Ludger D. Martin of Gadsden, Alabama, a member of the Alabama Bar. Mr. Martin was counsel of the petitioner's own choosing, from the petitioner's home city in Alabama. * * "

I here and now solemnly state that my son, Frank Jimmy Snider, Jr., did not choose Martin as his counsel, that he had nothing to do with his employment, but that in desperation in an effort to help my son, I employed Martin.

Martin arrived in Roanoke on the night of June 24, 1956; he sought to see Frank that night in the Roanoke city jail and was refused permission to see him. Frank was not acquainted with Martin and did not know him until he walked into the courtroom on the morning of June 25, 1956.

I here and now solemnly state that the refusal of the prosecuting authorities in Roanoke, Virginia, to set the trial for a date in July, as understood by McCord and me, seriously injured and prejudiced my son, Frank, in the defense of the charge against him.

Likewise, the failure of the prosecuting authorities in Roanoke, Virginia, to carry out the promise made to me to have a mental examination made by the naval doctors at the naval base in Norfolk, Virginia, was prejudicial to his defense.

As before stated, I live in Gadsden, Alabama. I employed T. W. Messick, of Roanoke, Virginia, in January of this year to do what he could for Frank. The charges against Frank have been tried and ap-

peals refused by the Supreme Court of Virginia before I called Messick. I have had little, if any, opportunity to talk to Messick, other than by long-distance telephone. The facts as to the employment of McCord and the statements made by the prosecuting authorities of Roanoke, Virginia, were told by me to Mr. Messick late yesterday, July 4, 1957, and today, July 5, 1957. Messick requested that I make an affidavit of the facts and I have done so to the best of my ability.

I solomnly swear that the foregoing statements contained in this affidavit are true to the best of my knowledge and belief.

I feel confident that Roy D. McCord and Ludger D. Martin, attorneys of Gadsden, Alabama, will verify my statements.

(s) Frank J. Snider, Sr.

I further certify that deponent read and affixed his signature to the foregoing in my presence on the date aforementioned, July 6, 1957, at Richmond, Virginia, and that I affixed my official notarial seal hereto.

(s) C. Overton Lee
Notary Public

APPENDIX VII

TELEGRAM OF ROY D. McCORD
Dated July 8, 1957

GADSDEN ALA 8 500 PMC—
1957 JUL 8 PM 6 13

T W MESSICK—
ATTORNEY AT LAW CARE HOTEL JOHN MARSHALL RICH—HAVE JUST READ THE AFFADAVIT OF FRANK J SNYDER SR AS ATTACHED TO YOUR SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS AND SAID AFFADAVIT IS TRUE AND CORRECT WITH REFERENCE TO THE MATTERS SET FORTH THEREIN WHEREIN I AM MENTIONED—
ROY D MCCORD—

APPENDIX VIII

AFFIDAVIT OF LUDGER D. MARTIN
Dated August 20, 1957

Dear Sir:

This is to inform you that Frank Snider did not have an attorney of his choice to represent him in the above styled cause. He wanted Roy D. McCord to represent him and his father employed Mr. McCord to try his case for him. Mr. McCord was unable to go to Roanoke to try the case due to the fact that he was engaged in the trial of cases in Gadsden, Alabama, and informed Mr. Frank Snider, Sr. of this fact. Mr. Snider, Sr. then employed me to go to Roanoke to help defend Frank, which I did. Frank had

never discussed the case with me prior to the day the trial began as the authorities in Roanoke refused to allow me to see Frank the night I arrived there which was the day before the trial.

Since Mr. McCord is an experienced attorney with thirty-six years of practice behind him, since I am inexperienced in the practice of law, since I was not employed and didn't even know that I was going to Roanoke to try this case until a day or two prior to the trial and since Frank Snider did not employ me and did not discuss the case with me, I feel that his rights were seriously jeopardized. There can be no contention on the part of the State that Frank Snider had an attorney of his choice to defend him as Mr. Houchins was appointed by the Court, and I was employed in desperation at the last minute by Frank Snider's father.

Yours very truly,
(s) L. D. Martin

LMD: jc

STATE OF ALABAMA
ETOWAH COUNTY

Before me, the undersigned authority in and for said County and State, personally appeared L. D. Martin, who, after first being duly sworn, deposes and says that all matters and things contained in the foregoing letter are true and correct.

This the 20th day of August, 1957.

(s) Jean Cochran
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In the

Supreme Court of the United States

October Term, 1957

No. 708

FRANK JIMMY SNIDER, JR.
Petitioner

v.

W. FRANK SMYTH, JR.
Respondent

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of Virginia

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

A. S. HARRISON, JR.
Attorney General of Virginia

C. F. HICKS
Asst. Atty. General of Virginia

Supreme Court–State Library Building
Richmond 19, Virginia

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On Petition for a Writ of Certiorari to the Supreme Court of Appeals of Virginia

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

The respondent, believing that the matters set forth herein will demonstrate the lack of jurisdiction of this Court and, further, the lack of substance in the questions presented by this petition, files this brief in opposition to the petitioner's petition for writ of certiorari. The respondent includes the ground that the decision below was not rested on a federal question. The matters here relied upon are more particularly stated below.

I.

STATEMENT OF THE CASE AND THE PROCEEDINGS BELOW

On May 13, 1956, soon after 6:00 P. M., Patsy Ann Flagg, a white female nine years of age, was taken from the rear of her home on Chapman Avenue, S.W., in the City of Roanoke, Virginia, to a point in Roanoke County,

50 feet outside of the corporate limits line of the City of Roanoke. There she was criminally assaulted and returned to her home at approximately 7:30 P. M., of the same day.

The petitioner, Frank Jimmy Snider, Jr., is a white male, 29 years of age, born and raised in Gadsden, Alabama. He has a tenth grade education. He is married; his wife and two children reside in Gadsden, Alabama. He is a structural steel worker, and this trade required his working on construction projects in various sections of the country. He came to Roanoke, Virginia, on a construction project. In October, 1955, he suffered a head and back injury. In March, 1956, Snider was transferred to Baltimore, Maryland. He came to Roanoke on Friday, May 11, 1956, and was in Roanoke on May 13, 1956, the day the Flagg child was criminally assaulted.

He was positively identified by the Flagg child as the person who assaulted her. The automobile owned and operated by the accused the night of the assault was identified as being the one in which the Flagg child was taken away. The petitioner was positively identified as being the person who made an indecent exposure and proposal to another young girl in the vicinity of the Flagg child's home at approximately 5:50 P. M., on May 13, 1956, and he was in his automobile at the time.

Allegedly, fresh blood stains were found on the seat of the petitioner's automobile and on a pair of his trousers.

At approximately 8:00 P. M., on May 13, 1956, the police gave chase to the petitioner's automobile, the automobile eluded the police and later it was found abandoned north of the City of Roanoke.

The defendant went to Gadsden, Alabama, and was arrested at his home there the latter part of May, 1956, on a warrant issued by the Commonwealth of Virginia, wherein he was charged with rape of the Flagg child. He waived

extradition and voluntarily accompanied Virginia officers back to Roanoke, Virginia.

An indictment was returned by the Grand Jury on June 4, 1956, charging the petitioner with statutory rape. On June 6, 1956, the Commonwealth's Attorney of Roanoke, Virginia notified Mr. Roy D. McCord, attorney at law, Gadsden, Alabama, that the petitioner's case was set for trial at 10:00 A. M., on June 25, 1956 (Appendix O).

Some time after June 4, 1956, but before June 12, 1956, Ransome B. Houchins, an attorney with thirty-two years' experience, was appointed by the Hustings Court of the City of Roanoke to defend the petitioner. Mr. Houchins held his first conference with the petitioner on either the 11th or 12th day of June, and held a number of conferences with the petitioner between that time and the trial date and with other persons for the purpose of preparing the petitioner's defense and summoning witnesses (Appendix K).

Dr. Charles M. Irvin, a general practitioner of medicine, and Dr. Edwin J. Palmer, a doctor of medicine, specializing in the practice of psychiatry, were appointed by the Judge of the Hustings Court of the City of Roanoke, on or before the 7th day of June, 1956, to examine the petitioner to determine his mental responsibility. Dr. Irvin and Dr. Palmer visited and examined the petitioner in the Roanoke City Jail on June 7, 1956, and June 20, 1956, and, at the conclusion of their examination, determined that the petitioner "was mentally responsible and not insane, and found no evidence of insanity or anything that would indicate that he should not be considered to be responsible for his acts" (Appendices L and M). Dr. Irvin and Dr. Palmer reported their findings to the prosecuting authorities prior to the date of the trial, and Mr. Ransome B. Houchins, one of the petitioner's defense attorneys, was informed of the conclusions reached by Drs. Irvin and Palmer after their exam-

ination of the petitioner and, therefore, no plea of insanity was interposed (Appendix K).

On June 22, 1956 an order was entered by the Hustings Court for the City of Roanoke, confirming of record the appointment of Ransome B. Houchins as attorney to represent the petitioner, and the appointment of Drs. Irvin and Palmer to examine and determine the mental condition of the petitioner (Appendix E). One June 25, 1956, the petitioner was arraigned, plead not guilty, a jury was impaneled and the trial began. On June 26, 1956, at the conclusion of all the evidence, the jury, upon consideration of its verdict, found the petitioner guilty of statutory rape and imposed the death penalty (Appendix F).

The petitioner was represented throughout the trial by Mr. Ransome B. Houchins, the court-appointed attorney, a member of the Bar of Virginia since 1925, and by Mr. Ludger D. Martin, counsel retained by the petitioner's family from Gadsden, Alabama, a member of the Bar of Alabama (Appendix K). Neither attorney at any time prior to or during the trial requested a continuance (Appendices K and O).

On June 26, 1956 counsel for the petitioner argued a motion before the trial court requesting the court to set aside the verdict of the jury. The court overruled the motion and sentenced the petitioner to be executed (Appendix G). A petition for a writ of error and supersedeas was filed in the Supreme Court of Appeals of Virginia. The Supreme Court of Appeals rejected the petition, and refused the writ, the effect of which was to affirm the judgment of the Hustings Court of the City of Roanoke.

In February, 1957, the petitioner petitioned this Honorable Court for a writ of certiorari. The writ was denied on March 25, 1957. Petition to rehear was filed and subsequently denied on May 6, 1957. *Snider* v. *Commonwealth*

of Virginia, 353 U. S. 916, 1 L. ed. 2d 663, 77 S. Ct. 665; rehearing denied, 353 U. S. 951, 1 L. ed. 2d 860, 77 S. Ct. 859.

On July 3, 1957, the petitioner filed a petition for habeas corpus in the Hustings Court, Part II, of the City of Richmond, Virginia. The petition was denied for the reasons stated in the Court's Order and opinion of July 5, 1957 (Appendix H). On July 8, 1957, the petitioner filed a supplemental petition for the writ of habeas corpus in the Hustings Court. This petition was also denied (Appendix I).

A petition for writ of error and supersedeas before the Supreme Court of Appeals of Virginia from the orders of the Hustings Court, Part II, of the City of Richmond, refusing to grant the petitioner a writ of habeas corpus was denied on October 9, 1957 (Appendix J). It is from this decision of the Supreme Court of Appeals of Virginia that the petitioner is seeking the issuance of a writ of certiorari.

II.

THE QUESTIONS PRESENTED

The petitioner contends that, in the trial of this case in the H istings Court of the City of Roanoke, he was denied due process of law and equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States. These specific questions are raised by the allegations of the petitioner:

1. Was the petitioner denied the right of counsel in that the petitioner alleges that reasonable time was not afforded between the time of the assignment of counsel by the trial court and the date of trial?

2. Was the petitioner put to trial without a determination of his mental condition, and was the Commonwealth required by its own statutes, or by the Fourteenth Amend-

ment, to introduce evidence as to the mental condition of the petitioner?

Both of these questions were presented in the petition for certiorari in this case filed with this Honorable Court in February, 1957. *Snider* v. *Commonwealth of Virginia*, 353 U. S. 916, 1 L. ed. 2d 663, 77 S. Ct. 665; rehearing denied, 353 U. S. 951, 1 L. ed. 2d 860, 77 S. Ct. 859.

III.

ARGUMENT

The Petitioner Was Adequately Represented by Competent Counsel

The petitioner was properly and adequately represented by counsel throughout the proceedings. Mr. Ransome B. Houchins of Roanoke, Virginia, a member of the Virginia Bar for over thirty years, was the court-appointed attorney. Although the order appointing Mr. Houchins was not entered by the Court until June 22, 1956, Mr. Houchins was actually appointed by the Court and notified of his appointment some time prior to June 12, 1956. Mr. Houchins, in his affidavit (Appendix K), states that his first conference with the petitioner was held on the 11th or 12th of June, 1956; that a number of conferences were held between that time and the trial with the petitioner and with other persons for the purpose of preparing the petitioner's defense and summoning witnesses.

In addition to Mr. Houchins, the petitioner was also represented by Mr. Ludger D. Martin of Gadsden, Alabama. Mr. Martin was retained by the petitioner's family and was present throughout the trial. The orders of the Court of June 26, 1956 and June 27, 1956 both contain the following recital, "Also came the defendant's attorneys" (Appendices F and G).

The petitioner did not request a continuance at any time,

nor did either of his attorneys request a continuance for additional time to prepare the petitioner's defense. Mr. Hotchins, the court-appointed attorney, inquired of Mr. Martin, the family retained attorney, whether or not he for any reason desired a continuance, and Mr. Martin stated to him and to the Commonwealth's Attorney, Mr. C. E. Cuddy, that he did not wish a continuance, but desired that the trial be commenced that day, June 25, 1956 (Appendices K and O).

The petitioner contends in his petition that Mr. Roy D. McCord, attorney at law, Gadsden, Alabama, was counsel desired by the petitioner, but that another trial date was refused Mr. McCord and, therefore, because of previous commitments, Mr. McCord could not represent him, and in his place, Mr. Ludger D. Martin, a young lawyer in McCord's office came in his place (page 8 of petition). Mr. C. E. Cuddy, Commonwealth's Attorney of the City of Roanoke, wrote Mr. Roy McCord on June 6, 1956, and informed him of the trial date. Mr. McCord never replied to this letter (Appendix O). Mr. Martin was asked if he desired a continuance. He replied that he did not, and no motion for a continuance was ever made (Appendices K and O). Mr. Martin was born in 1920, and finished at the Law School of the University of Alabama in 1948 (Martindale-Hubbell).

This Honorable Court, in its decision rendered by Mr Justice Black in the case of *Avery* v. *Alabama*, 308 U. S. 444, said:

> "In determining whether petitioner has been denied his constitutional right to assistance of counsel, we must remember that the Fourteenth Amendment does not limit the power of the states to try and deal with crimes committed within their borders, and was not

> intended to bring to the test of a decision of this Court every ruling made in the course of a state trial. Consistently with the preservation of constitutional balance between State and Federal sovereignty, this court must respect and is reluctant to interfere with the State's determination of local social policy." 308 U. S. at 446, 447.

In *Avery* v. *Alabama*, *supra*, the court appointed two attorneys to represent the accused on March 21, 1938, and the trial of the case was commenced on March 24, 1938. The two court-appointed attorneys filed a motion for a continuance on the ground that they had not had a sufficient time to investigate and prepare the accused's defense. The trial court overruled the motion and the case went to trial on that day. This Honorable Court held:

> "Under the circumstances of this case we cannot say that the trial judge, who concluded a fairly conducted trial by carefully safeguarding petitioner's rights in a clear and fair charge, deprived petitioner of his constitutional right to assistance of counsel." 308 U. S. at 453.

In the instant case, one attorney representing the petitioner was appointed by the court two weeks before the trial of the case, and first conferred with the petitioner at least thirteen days before the trial of the case (Appendix K). The other attorney was counsel retained by the petitioner's family from the petitioner's home city of Gadsden, Alabama. Neither attorney requested a continuance. The record shows that both attorneys represented the petitioner throughout the trial of the case. The petitioner's right to assistance of counsel was carefully safeguarded, protected and assured throughout the trial.

The Commonwealth Was Not Required to Introduce Evidence Relating to the Mental Condition of the Petitioner

The Hustings Court of the City of Roanoke appointed two physicians, one of whom specialized in the practice of psychiatry, to examine the petitioner and to determine his mental condition. On June 7, 1956, and again on June 20, 1956, these two physicians examined the petitioner. At the conclusion of the examination, they determined that the petitioner was mentally responsible and not insane, and found no evidence of insanity or anything that would indicate that he should not be considered to be responsible for his acts, and these findings were reported verbally to the prosecuting authorities prior to the date of the trial (Appendices L and M). The record of the case does not show that either of these physicians ever testified or filed any written report as to their findings; however, one of the petitioner's attorneys, Mr. Houchins, states that he was informed of the finding by the two physicians regarding the sanity of the petitioner, and, therefore, no plea of insanity was interposed (Appendix K).

The Supreme Court of Appeals of Virginia has held as follows on the question of insanity of the accused:

> "In *Wessells* v. *Commonwealth*, 164 Va. 664, 180 S. E. 419, 422, where the defense was insanity, this Court reaffirmed the doctrine laid down in *Dejarnette* v. *Commonwealth*, 75 Va. 867, that the Commonwealth, having established the corpus delicti, and that the act was done by the accused, has made out her case and the burden then rests upon the accused to prove to the satisfaction of the jury that at the time of the commission of the act he was insane.
>
> "This burden rests upon the accused by reason of the presumption of law that every person of the age of discretion is of sound mind." *Maxwell* v. *Commonwealth*, 165 Va. 860, 865, 183 S. E. 452, 454. See also,

Holober v. *Commonwealth*, 191 Va. 826, 62 S. E. 2d 816; *Thurman* v. *Commonwealth*, 107 Va. 912, 916, 60 S. E. 99; *Baccigalupo* v. *Commonwealth*, 33 Gratt. (74 Va.) 807, 817, 36 Am. Rep. 795; *Boswell's Case*, 20 Gratt. (61 Va.) 860, 868.

The Virginia doctrine on this question of insanity does not place as great a burden upon an accused wishing to plead insanity as the statutes of the State of Oregon, which require the accused to prove his insanity beyond a reasonable doubt. In *Leland* v. *Oregon*, 343 U. S. 790, at page 798, this Honorable Court said:

> "Today, Oregon is the only state that requires the accused, on a plea of insanity, to establish that defense beyond a reasonable doubt. Some twenty states, however, place the burden on the accused to establish his insanity by a preponderance of the evidence or some similar measure of persuasion * * *. In each instance, in order to establish insanity as a complete defense to the charges preferred, the accused must prove that insanity. The fact that a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with the process, but it is plainly worth considering in determining whether the practice 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' Snyder v. Massachusetts, 291 U. S. 97. * * *. We are therefore reluctant to interfere with Oregon's determination of its policy with respect to the burden of proof on the issue of sanity, since we cannot say that policy violates generally accepted concepts of basic standards of justice."

The trial court complied with the provisions of Section 19-202 of the Code of Virginia (Appendix D). The court, over two weeks before the trial, appointed two physicians to make such investigation as they deemed necessary and report to the court the condition of the defendant at the time of the examination. There is no requirement in the

statute which makes it necessary for this report to be put into the record of the case, nor does the statute require the physicians to be placed on the witness stand by the Commonwealth.

There was an order entered of record three days before the trial of the case reciting the appointment of the two physicians. The petitioner and his attorneys knew that these physicians had been appointed to examine the petitioner. If they desired a written report of their determination as to the condition of the petitioner to go into the record or to be presented to the jury, the petitioner, through his attorneys, could have summoned the physicians to testify. One of the attorneys states that he knew of the findings. The petitioner never asserted at any time the defense of insanity, nor did he raise the question in any manner in the trial court. The petitioner has not been deprived of any constitutional rights or due process of law by reason of the fact that the Commonwealth did not introduce evidence relating to the mental condition of the petitioner.

IV.

CONCLUSION

Wherefore, the respondent respectfully submits that, for the reasons stated, the petitioner has not been denied any constitutional rights or due process of law, and the respondent respectfully moves the Court to dismiss the petitioner's petition for writ of certiorari.

Respectfully submitted,

A. S. Harrison, Jr.
Attorney General of Virginia

C. F. Hicks
Asst. Atty. General of Virginia

Supreme Court – State Library Building
Richmond 19, Virginia

APPENDIX A

Constitution of the United States
AMENDMENT XIV
SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person with its jurisdiction the equal protection of the laws.

APPENDIX B

Constitution of Virginia
SECTION 8, FIRST PARAGRAPH

That in criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except by the law of the land or the judgment of his peers; nor be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offense.

APPENDIX C

Code of Virginia
SECTION 18-54

If any person carnally know a female of sixteen years of age or more against her will, by force, or carnally know a

female child under that age or a female inmate of any hospital for the insane, who has been adjudged a lunatic, or any female who is an inmate or pupil of an institution for deaf, dumb, blind, feeble-minded, or epileptic persons, he shall, in the discretion of the court or jury be punished with death, or confinement in the penitentiary for life, or for any term not less than five years. But if such female child be between the ages of fourteen and sixteen years and not an inmate or pupil of such institutions hereinbefore mentioned, and consents to the carnal knowledge, the punishment shall be confinement in the penitentiary not less than one nor more than twenty years.

APPENDIX D

Code of Virginia
SECTION 19-201
and
SECTION 19-202

No person shall, while he is insane, be tried for a criminal offense.

If, prior to the time for trial of any person charged with crime, either the court or attorney for the Commonwealth has reason to believe that such person is in such mental condition that his confinement in a hospital for the insane or a colony for the feeble-minded is necessary for proper care and observation, the court or the judge thereof may, after hearing evidence on the subject, commit such person, if a white person, to any State hospital for the insane best adapted to meet the needs of the case and, if a colored person to the Central State Hospital, under such limitations as it may order, pending the determination of his mental condi-

tion. In any such case the court, in its discretion, may appoint one or more physicians skilled in the diagnosis of insanity, or other qualified physicians, and when any person is alleged to be feeble-minded may likewise appoint persons skilled in the diagnosis of feeble-mindedness, not to exceed three, to examine the defendant before such commitment is ordered, make such investigation of the case as they may deem necessary and report to the court the condition of the defendant at the time of their examination. A copy of the complaint or indictment, attested by the clerk, together with the report of the examining commission, including, as far as possible, a personal history, according to the form prescribed by the general board of directors of the State hospitals, shall be delivered with such person to the superintendent of the hospital to which he shall have been committed under the provisions of this section. As used in this section the term "court" shall be construed to include courts not of record and courts of record.

APPENDIX E

Order of June 22, 1956, of Hustings Court of City of Roanoke

It appearing to the court that the defendant, Frank Jimmy Snider, Jr., is unable to employ counsel for his defense, Ransome B. Houchins is appointed to defend the said Frank Jimmy Snider, Jr.

Upon the motion of the attorney for the Commonwealth of Virginia it is ordered that Dr. Chas. M. Irvin and Dr. E. J. Palmer be, and they are hereby, appointed a commission to examine the mental condition of the defendant, Frank Jimmy Snider, Jr.

APPENDIX F

Order of June 26, 1956, of Hustings Court of City of Roanoke

This day again came the Attorney for the Commonwealth of Virginia, and the prisoner, Frank Jimmy Snider, Jr., was brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia, and set to the bar. Also came the defendant's attorneys.

There also came into Court the jury sworn in this case, pursuant to their adjournment, and having heard all of the evidence, received the instructions of the Court and heard the argument of counsel, retired to consider their verdict and after some time returned into Court the following verdict, viz:

> "We the jury find the defendant, Frank Jimmy Snider, Jr., guilty as charged in this indictment of statutory rape and fix his punishment by death.
>
> W. N. Hobbie, Foreman."

and the jury were discharged.

Thereupon the defendant, by counsel, moved the Court to set aside the verdict of the jury on the grounds that the same was contrary to the law and evidence, which motion the Court takes time to consider, and argument on said motion is set for hearing on June 27, 1956 at ten o'clock a.m.

And the prisoner is remanded to jail.

APPENDIX G

Order of June 27, 1956, of Hustings Court of City of Roanoke

This day again came the Attorney for the Commonwealth of Virginia, and the prisoner, Frank Jimmy Snider, Jr., was

brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia, and set to the bar. Also came the defendant's attorneys.

Thereupon the Court having heard the argument of counsel on the motion to set aside the verdict of the jury rendered in this case on the 26th day of June, 1956, and maturely considered the same, said motion is hereby overruled.

It is therefore considered by the Court that the said Frank Jimmy Snider, Jr., be sentenced to death, the punishment by the jury in their verdict ascertained, and it is ordered that, as soon as practicable, the said Frank Jimmy Snider, Jr., be removed from the jail of the City of Roanoke, Virginia, and safely conveyed to the State Penitentiary at Richmond, Virginia, therein to be detained until the 3rd day of August, 1956, at which time the said Frank Jimmy Snider, Jr., shall be executed as provided by law.

Thereupon the defendant, by counsel, excepted to the action of the Court in overruling his motion to set aside the verdict of the jury and pronouncing judgment against him.

And the prisoner is remanded to jail.

APPENDIX H

Order of July 5, 1957, of Hustings Court, Part II, City of Richmond, Virginia

The petitioner, Frank Jimmy Snider, Jr., by counsel, heretofore on July 3, 1957, having presented to the Court his Petition for a writ of habeas corpus with respect to the commitment resulting from his trial in the Hustings Court of the City of Roanoke on June 25-27, 1956, the Court doth order the same filed.

And upon a consideration of the Petition the Court being of opinion (1) that in the absence of any allegation of fact

tending to show wherein the appointment of counsel to defend the petitioner three days prior to his trial prejudiced his defense in fact, and that such appointment and trial three days later would not constitute a denial of due process of law as a matter of law; and (2) that if the petitioner was insane either at the time of the alleged commission of the offense for which he was tried or was insane at the time of his trial, or if there were any doubt thereof, the failure to plead any such alleged insanity as a defense is a bar to any subsequent attempt to raise the issue by habeas corpus, the issue of sanity or insanity and the failure of the record to show the filing of a commission report thereon not being jurisdictional nor a denial of equal protection of the laws;

Therefore, the Court being of opinion that there has been no sufficient allegation of any violation of federal or state constitutional guarantees, the Court doth deny the petition for a writ of habeas corpus; to which action of the Court the petitioner by counsel objects and excepts.

A Copy, Teste. (s) Chas. D. Purdy, Clerk.

APPENDIX I

Order of July 8, 1957, of Husting Court, Part II, City of Richmond, Virginia

This day came the petitioner, Frank Jimmy Snider, Jr., by counsel, and by leave of Court filed his Supplemental Petition for a Writ of Habeas Corpus herein.

And upon a consideration thereof and the affidavit of Frank J. Snider, Sr., father of the petitioner; it appearing that many of the matters in the affidavit are based upon hearsay; that matters relating to the waiver of extradition of the petitioner from Alabama to Virginia are no pertinent

nent to the question of whether there was a denial of due process of law in the petitioner's trial; that it does not appear that any request was made to the Court for a continuance of the trial;

And the Court being of opinion that the Petition and the Supplemental Petition fail to show probable cause for the issuance of a writ of habeas corpus, the Court doth deny the Petition and Supplemental Petition therefor.

To which action of the Court the petitioner, by counsel, objects and excepts.

A Copy, Teste: (s) Chas. D. Purdy, Clerk.

APPENDIX J

Opinion of Supreme Court of Appeals of Virginia Rendered October 9, 1957

The petition of Frank Jimmy Snider, Jr., for a writ of error and supersedeas to a judgment rendered by the Hustings Court of the City of Richmond, Part II, on the 8th day of July, 1957, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and W. Frank Smyth, Jr., Superintendent of the Virginia State Penitentiary, was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the Court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said Hustings Court.

A copy, Teste:
(s) H. G. Turner
Clerk

APPENDIX K

Affidavit of Ransome B. Houchins, Attorney for Frank J. Snider, Jr.

This day, Ransome B. Houchins, personally appeared before me, Virginia E. Gaines, a Notary Public in and for the City of Roanoke, State of Virginia, and after first being duly sworn, stated:

That he is a practicing attorney in the City of Roanoke, Virginia and has been licensed to practice law in the State of Virginia since 1925, and at one time served as Assistant Prosecuting Attorney in the State of West Virginia; that he was appointed in the early part of the June 1956 Term of the Hustings Court for the City of Roanoke, Virginia by the Court to defend Frank Jimmy Snider, Jr.; that his first conference with Frank Jimmy Snider, Jr. in preparation of his defense was either on the 11th or 12th day of June, 1956; that a number of conferences were held with him subsequent to that time and with other persons who were contacted for the purpose of preparing Mr. Snider's defense and summoning witnesses;

That Ludger D. Martin, an attorney from the State of Alabama, assisted in the defense of Frank Jimmy Snider, Jr. and that he, the affiant, first saw Mr. Martin on the morning of the 25th day of June, 1956 just prior to the commencement of the trial, and that Mr. Martin represented that he was employed by Frank Jimmy Snider, Jr.'s family for the purpose of assisting in the defense of Frank Jimmy Snider, Jr.; that he, the affiant, inquired of Mr. Martin whether or not Mr. Martin, for any reason, might desire a continuance or postponement of the trial, and that Mr. Martin replied that he did not wish a continuance but desired that the trial be commenced and concluded in order that he might get away from the City of Roanoke as soon as possible; that from his association with Mr. Martin and

observation of the manner in which he assisted in the defense of the case, he considered Mr. Martin to be a very competent and able attorney; and that no motion was ever made to the Court for a continuance or postponement of the case.

The affiant further stated that he was informed of the decision by Dr. Palmer and Dr. Irvin regarding the sanity of Frank Jimmy Snider, Jr. and that no plea of insanity was interposed.

(s) Ransom B. Houchins
Ransom B. Houchins

STATE OF VIRGINIA
CITY OF ROANOKE } TO-WIT:

I, Virginia E. Gaines, a Notary Public in and for the City and State aforesaid, do hereby certify that Ransom B. Houchins, personally appeared before me in my City and State aforesaid and signed the foregoing writing and made oath that the statements therein contained are true and correct.

Given under my hand and seal this 17th day of January, 1958.

(s) Virginia E. Gaines
Notary Public

My commission expires: February 26, 1958.

APPENDIX L

Affidavit of Dr. Charles M. Irvin

This day, Charles M. Irvin, M.D., personally appeared before me, Virginia E. Gaines, a Notary Public in and for the City of Roanoke, State of Virginia, and after first being duly sworn, stated:

That he is a doctor of medicine, licensed by the State of Virginia for a number of years; that he and Edwin J. Palmer, M.D. were appointed by the Judge of the Hustings Court for the City of Roanoke, Virginia in June, 1956 to examine Frank Jimmy Snider, Jr. to determine his mental responsibility; that he and Dr. Palmer first visited Frank Jimmy Snider, Jr., who was confined in the Roanoke City jail, on the 7th day of June, 1956 and again on the 20th day of June, 1956, and at the conclusion of said examination, determined that the said Frank Jimmy Snider, Jr. was mentally responsible and not insane, and found no evidence of insanity or anything that would indicate that he should not be considered to be responsible for his acts; and that said findings by them were reported verbally to the prosecuting authorities prior to the date on which Frank Jimmy Snider, Jr. went to trial.

(s) Chas. M. Irvin, M.D.
Charles M. Irvin, M.D.

STATE OF VIRGINIA
CITY OF ROANOKE } TO-WIT:

I, Virginia E. Gaines, a Notary Public in and for the City and State aforesaid, do hereby certify that Charles M. Irvin, M.D. personally appeared before me in my City and State aforesaid and signed the foregoing writing and made oath that the statements therein contained are true and correct.

Given under my hand and seal this 17th day of January, 1958.

(s) Virginia E. Gaines
Notary Public

My commission expires: February 26, 1958.

APPENDIX M

Affidavit of Dr. Edwin J. Palmer

This day, Edwin J. Palmer, M.D., personally appeared before me, Virginia E. Gaines, a Notary Public in and for the City of Roanoke, State of Virginia, and after first being duly sworn, stated:

That he is a doctor of medicine, licensed by the State of Virginia for a number of years, and specializing in the practice of psychiatry; that he and Charles M. Irvin, M.D. were appointed by the Judge of the Hustings Court for the City of Roanoke, Virginia in June, 1956 to examine Frank Jimmy Snider, Jr. to determine his mental responsibility; that he and Dr. Irvin first visited Frank Jimmy Snider, Jr., who was confined in the Roanoke City jail, on the 7th day of June, 1956 and again on the 20th day of June, 1956, and at the conclusion of said examination, determined that the said Frank Jimmy Snider, Jr. was mentally responsible and not insane, and found no evidence of insanity or anything that would indicate that he should not be considered to be responsible for his acts; and that said findings by them were reported verbally to the prosecuting authorities prior to the date on which Frank Jimmy Snider, Jr. went to trial.

(s) Edwin J. Palmer, M.D.
Edwin J. Palmer, M.D.

STATE OF VIRGINIA
CITY OF ROANOKE } TO-WIT:

I, Virginia E. Gaines, a Notary Public in and for the City and State aforesaid, do hereby certify that Edwin J. Palmer, M.D. personally appeared before me in my City and State aforesaid and signed the foregoing writing and made oath that the statements therein contained are true and correct.

Given under my hand and seal this 17th day of January, 1958.

(s) Virginia E. Gaines
Notary Public

My commission expires: February 26, 1958.

APPENDIX N

Affidavit of Captain K. E. Allman, Roanoke City Police Department

This day, Captain K. E. Allman, Captain of Detectives, Roanoke City Police Department, appeared before me, Virginia E. Gaines, a Notary Public in and for the City of Roanoke, State of Virginia, and after first being duly sworn, stated:

That he is Captain of Detectives of the Police Department for the City of Roanoke, Virginia; that he and a guard were sent to Gadsden, Alabama for the purpose of returning Frank Jimmy Snider, Jr. to Roanoke, Virginia to answer a charge of Statutory Rape; that at no time while in Alabama did he discuss with, or promise, any person that a mental examination of Frank Jimmy Snider, Jr. would be made by Naval doctors at the Naval Base at Norfolk, Virginia or at any other place; and that he had never heard of any such promise until it was reported to him by Mr. C. E. Cuddy, Commonwealth's Attorney for the City of Roanoke, Virginia, as having appeared in an affidavit executed by Frank J. Snider, Sr.

(s) K. E. Allman
K. E. Allman

STATE OF VIRGINIA
CITY OF ROANOKE } TO-WIT:

I, Virginia E. Gaines, a Notary Public in and for the City and State aforesaid, do hereby certify that K. E. Allman, personally appeared before me in my City and State aforesaid and signed the foregoing writing and made oath that the statements therein contained are true and correct.

Given under my hand and seal this 17th day of January, 1958.

(s) Virginia E. Gaines
Notary Public

My commission expires: February 26, 1958.

APPENDIX O

Affidavit of C. E. Cuddy, Commonwealth's Attorney of the City of Roanoke

This day, C. E. Cuddy, Commonwealth's Attorney for the City of Roanoke, Virginia appeared before me, Virginia E. Gaines, a Notary Public in and for the City of Roanoke, State of Virginia, and after first being duly sworn, stated:

That he is Commonwealth's Attorney for the City of Roanoke, Virginia; that extradition papers were filed with the authorities of Alabama for the return of Frank Jimmy Snider, Jr. to the State of Virginia; that pursuant to notification by Alabama authorities, Captain K. E. Allman and guard went to Gadsden, Alabama and returned Frank Jimmy Snider, Jr. for trial in the City of Roanoke;

That the affiant received a letter from Roy D. McCord, an attorney of Gadsden, Alabama, dated May 28, 1956 [copy attached], informing him that a mental examination of Frank Jimmy Snider, Jr. was desired, and concluding

his letter with the following remarks: "The officers who came for Mr. Snider here were very nice and lived up to every promise they made to me and the family, and I feel sure that Roanoke should congratulate itself upon having such nice officers."; and that largely upon the request by Mr. McCord, the affiant requested the Court to appoint Dr. Charles . Irvin and Dr. Edwin J. Palmer to determine the mental condition of Frank Jimmy Snider, Jr.; and that the findings of the said doctors were reported to the affiant verbally and communicated by him to Mr. Ransom B. Houchins, the attorney appointed for Frank Jimmy Snider, Jr.

That on June 6, 1956 [copy attached], the affiant wrote Mr. McCord informing him that the case had been set for trial on June 25, 1956; that Frank Jimmy Snider, Jr. was ably defended by Mr. Ransom B. Houchins, a local attorney of wide experience and capabilities, and Mr. Ludger D. Martin of Alabama, who appeared to the affiant to be a capable and experienced attorney; that at no time was any motion made for a continuance or postponement of the case, but on the contrary, Mr. Martin insisted that the case be tried on the date on which it was scheduled, nor was any plea of insanity interposed as a defense.

(s) C. E. Cuddy
C. E. Cuddy

STATE OF VIRGINIA
CITY OF ROANOKE } TO-WIT:

I, Virginia F. Gaines, a Notary Public in and for the City and State aforesaid, do hereby certify that C. E. Cuddy, personally appeared before me in my City and State aforesaid and signed the foregoing writing and made oath that the statements therein contained are true and correct.

Given under my hand and seal this 17th day of January, 1958.

(s) Virginia E. Gaines
Notary Public

My commission expires: February 26, 1958.

Practicing in All the Courts of Etowah
and Surrounding Counties

Phones:
Office 65882
Res. 3795
Sibyl M. Miller
Secretary

ROY D. McCORD
Attorney at Law
GADSDEN, ALA.

Joe L. Moore
Realty Bldg.
Rms. 3, 4, 5, 6

May 28, 1956

Mr. C. E. Cuddy
Commonwealth Attorney
Municipal Building
Roanoke, Virginia

Dear Mr. Cuddy:

I am the Attorney for Frank Snider, Jr., who was recently carried back to your City from Gadsden. Mr. Snider had his back injured during the war, and several months ago he received a severe injury to his skull. His folks and myself believe there is something mentally wrong with this man and I would appreciate it very much if you could see your way clear to have him placed in the Veteran's Hospital there and give him a thorough examination.

Please advise me when your Grand Jury will take up the cases against Mr. Snider, and the probable date they will be set for trial. I intend to come to Roanoke in the near future, but I am waiting for a reply to this letter before

doing so. I had rather come after Frank has received a thorough examination than before he receives the examination.

The officers who came for Mr. Snider here were very nice and lived up to every promise they made to me and the family, and I feel sure that Roanoke should congratulate itself upon having such nice officers.

Sincerely yours,

RDM:sm (s) Roy D. McCord

CITY OF ROANOKE
VIRGINIA

C. E. Cuddy
Commonwealth's Attorney

A. B. Crush
Assistant

Mr. Roy D. McCord
Attorney at Law
Gadsden, Alabama

June 6, 1956

Re: Commonwealth of Virginia
v.
Frank Jimmy Snider, Jr.

Dear Sir:

The above styled case is set for trial in the Hustings Court for the City of Roanoke at 10:00 A. M., Monday, June 25th. Arrangements will be made just as soon as possible for an examination of Snider to determine whether or not it is necessary for him to be hospitalized.

Very truly yours,

(s) C. E. Cuddy

CEC:mm C. E. Cuddy